

FINDINGS OF FACT

After reviewing the record compiled to date, for preliminary hearing purposes the Appeals Board finds:

- (1) Ms. Romo claims that she was injured while working for Tharaldson Hampton Inn on July 26, 1998, when she was struck by a bundle of wet towels and knocked unconscious.
- (2) After the alleged incident, Ms. Romo saw various health care providers and received numerous instructions regarding work. Some of the providers believed that she could work without restrictions; some believed that she could work with restrictions; and some believed that she could not work at all.
- (3) After considering Ms. Romo's testimony and the medical documents introduced at the preliminary hearing, the Judge ordered payment of temporary total and temporary partial disability benefits for various periods.

CONCLUSIONS OF LAW

(1) This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing findings is limited to the following issues, which are deemed jurisdictional.¹

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and claim?
- (4) Is there any defense that goes to the very basis and compensability of the claim?

Also, the Appeals Board may review those preliminary hearing orders where the Judge has exceeded the Division's jurisdiction or authority.²

(2) Respondent and its insurance carrier request the Appeals Board to review the evidence and find that Ms. Romo is not entitled to the temporary total disability and temporary partial disability benefits for certain of those periods designated by the Judge. Because of the limits placed on its jurisdiction to review preliminary hearing findings, at this time the Appeals Board must decline that request to review and reweigh the evidence.

¹ K.S.A. 1997 Supp. 44-534a.

² K.S.A. 1997 Supp. 44-551.

(3) The issues whether a worker meets the definition of either being temporarily and totally disabled or being temporarily and partially disabled are not jurisdictional issues from a preliminary hearing that the Appeals Board may review. Further, because the Judge has the authority to decide such issues at the preliminary hearing, the Judge has not exceeded her jurisdiction so as to give the Board the authority to review the preliminary hearing Order.

(4) Next, the respondent and its insurance carrier correctly point out that the Judge ordered payment of both temporary total and temporary partial disability benefits for August 23 and 24, 1998. They contend that such overlap exceeds the Judge's jurisdiction and authority. The Appeals Board agrees that the Workers Compensation Act does not permit ordering payment of both temporary total and temporary partial disability benefits for the same date.

(5) Because the preliminary hearing Order does not otherwise indicate whether the Judge found Ms. Romo temporarily and totally disabled rather than temporarily and partially disabled on August 23 and 24, the Appeals Board is unable to correct the Order. Therefore, this proceeding should be remanded to the Judge to correct what very well may be a typographical error.

(6) As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim or a later preliminary hearing.³

WHEREFORE, the Appeals Board remands this proceeding to Judge Barnes to correct the overlap of temporary total and temporary partial disability benefits on August 23 and 24, 1998. Otherwise, the Order remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: Thomas T. Inkelaar, Wichita, KS
Anton C. Andersen, Kansas City, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1997 Supp. 44-534a(a)(2).